

DEPOSITION OF JAMES PATTERSON

July 10, 2006

Pages 1 through 136

**CONDENSED TRANSCRIPT AND CONCORDANCE
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EXHIBIT H

July 10, 2006

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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

LORI ANN MORRIS,
Plaintiff,

Vs. CIVIL ACTION NO.
3:02-CV-962-T

FLORIDA TRANSFORMER,
EDWARD NEAL THOMPSON,
et al.,
Defendants.

DEPOSITION OF JAMES PATTERSON, taken
pursuant to stipulation and agreement before
Haley A. Phillips, Certified Shorthand Reporter,
and Commissioner for the State of Alabama at Large,
at 301 South Ripley Street, Montgomery, Alabama, on
Monday, July 10, 2006, commencing at approximately
10:30 a.m.

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APPEARANCES

FOR THE PLAINTIFF:

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FOR THE DEFENDANT:

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STIPULATION

It is hereby stipulated and agreed by and
between counsel representing the parties that the
deposition of JAMES PATTERSON is taken pursuant to
the Federal Rules of Civil Procedure and that said
deposition may be taken before Haley A. Phillips,
Certified Shorthand Reporter, and Commissioner for
the State of Alabama at Large, without the
formality of a commission, that objections to
questions other than objections as to the form of
the question need not be made at this time but may
be reserved for a ruling at such time as the said
deposition may be offered in evidence or used for
any other purpose by either party provided for by
the Statute.

It is further stipulated and agreed by and
between counsel representing the parties in this
case that the filing of said deposition is hereby
waived and may be introduced at the trial of this
case or used in any other manner by either party
hereto provided for by the Statute regardless of
the waiving of the filing of the same.

It is further stipulated and agreed by and

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1 between the parties hereto and the witness that the
 2 signature of the witness to this deposition is
 3 hereby waived.
 4 COURT REPORTER: Usual
 5 stipulations okay?
 6 MR. BROUGHTON: Yeah. With the
 7 one exception that if, Henry,
 8 Sergeant Patterson is unable
 9 to attend trial for whatever
 10 reason, he gets conflicted,
 11 then I may want to use this
 12 deposition at trial.
 13 MR. PENICK: Well, I don't think I
 14 should use the usual
 15 stipulations, because I need
 16 to make my objections. For
 17 example, if he gives expert
 18 opinions, I need to go ahead
 19 and make those then.
 20 MR. BROUGHTON: That's fine. And
 21 I don't know how that's going
 22 to work out. I just know we
 23 don't have -- and Sergeant

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1 Broughton. I represent the defendants in
 2 this case. Tell us -- You've given a
 3 deposition before, haven't you?
 4 A. I have.
 5 Q. Okay. And so you know that answers have to
 6 be verbal and if you need to take a break
 7 during the course of this, let us know. I
 8 think this will be a relatively short
 9 deposition so that probably won't be
 10 necessary.
 11 A. Yes, sir.
 12 Q. But if you have any questions at all during
 13 the process, just let us know.
 14 Please state your name.
 15 A. James D. Patterson.
 16 Q. What is your current occupation?
 17 A. I'm an Alabama state trooper, rank of
 18 sergeant, assigned to the highway patrol
 19 division.
 20 Q. How long have you been with the Alabama
 21 State Troopers?
 22 A. Since 1993.
 23 Q. What are your duties as a sergeant with the

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1 Patterson probably doesn't
 2 have control over whether
 3 he'll be able to make it to
 4 trial or not, so I just wanted
 5 to make sure I'm clear on
 6 that.
 7 MR. PENICK: So I'm not going with
 8 the usual stipulations. I'm
 9 going to treat it as a trial
 10 deposition.
 11 COURT REPORTER: All right.
 12 *****
 13 JAMES PATTERSON
 14
 15 The witness, after having first been duly
 16 sworn to speak the truth, the whole truth and
 17 nothing but the truth testified as follows:
 18
 19 EXAMINATION
 20 BY MR. BROUGHTON:
 21 Q. Sergeant Patterson, you're here today
 22 pursuant to, I believe, our subpoena or
 23 notice to take your deposition; is that
 correct?
 A. That is correct.

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1 Alabama State Troopers?
 2 A. I'm a member of the Headquarters Highway
 3 Patrol Staff assigned as commander of the
 4 traffic homicide unit.
 5 Q. How long have you been in that position?
 6 A. Let me think.
 7 Q. Approximately.
 8 A. Approximately three years. I've been on
 9 the highway patrol headquarters staff. I
 10 was an assistant to the coordinator
 11 beginning in 1999. In 2003 I took over as
 12 coordinator.
 13 Q. Would you have been the commander at the
 14 time of this accident in September --
 15 A. Yes.
 16 Q. -- of '04?
 17 A. Yes, sir.
 18 Q. And what are your duties, day-to-day
 19 activities?
 20 A. I command the activities of the traffic
 21 homicide unit, which is comprised of some
 22 80 investigators deployed throughout the
 23 state. They're assigned to conduct crash

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1 investigations and motor vehicle crash
2 reconstruction in cases in which criminal
3 charges are possible.

4 Q. Were you working on the night -- really, I
5 guess the early morning hours of September
6 2, 2004?

7 A. Not initially, but I responded to this
8 crash.

9 Q. And did you have an opportunity to
10 investigate this particular accident that
11 occurred on September 2, 2004 around, it
12 looks like 3:25 a.m.?

13 A. I responded to the scene of this crash to
14 evaluate whether it met the criteria to
15 initiate an investigation by my unit. Once
16 there, found that it did not. Therefore,
17 no investigation by this unit was
18 initiated. The investigation was conducted
19 by a normal -- a regular member of the
20 highway patrol.

21 Q. Who was that?

22 A. Trooper Alex Huntley, who is not a member
23 of the traffic homicide unit.

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1 Q. Tell me, what time did you arrive at the
2 accident scene, approximately?

3 A. Somewhere after 4 a.m. I'm not certain
4 exactly. One moment. I can ... Between 4
5 and 5 a.m., but I don't know exactly what
6 time.

7 Q. Can you tell me what all you did --

8 A. I just --

9 Q. -- at the scene?

10 A. I walked through the scene to form an
11 opinion as to how the crash had occurred
12 and why the crash had occurred by
13 inspecting the vehicles, the marks on the
14 roadway, the final rest positions of the
15 vehicles and I photographed the scene.

16 Q. What conclusions or opinions did you reach?

17 MR. PENICK: I'm going to object
18 to conclusions based on the
19 fact there's no predicate that
20 he's qualified to give expert
21 opinion.

22 Q. Can you tell me what opinions you've
23 reached? And we'll fill in the

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1 credentials.

2 A. Based on the evidence that I saw at the
3 scene, it was my opinion that --

4 MR. PENICK: Same objection before
5 he gives his opinion.

6 A. It was my opinion that the 1998 Kenworth
7 truck tractor and -- had been the primary
8 contributing unit in this crash. The
9 driver of that vehicle, Mr. Vernell B.
10 Morris was deceased at the scene, which
11 eliminated the possibility of criminal
12 charges against the prime contributing
13 driver in this crash. Therefore, no
14 investigation was conducted by my unit.

15 Q. Were you able to form any opinions as to
16 the avoidability of the accident, whether
17 it was or was not avoidable by the driver
18 of the Peterbilt?

19 MR. PENICK: Objection. Same
20 objection. Lack of predicate
21 to qualify this witness as an
22 expert witness to give expert
23 testimony on that regard -- on

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1 that point.

2 A. I did form an opinion.

3 Q. And what was your opinion?

4 MR. PENICK: Same objection.

5 A. I believe that the crash was not avoidable
6 by Mr. Thompson, the driver of the 1995
7 Peterbilt.

8 Q. And what was the basis of that opinion?

9 A. The night of September 2, 2004 -- This
10 crash occurred at approximately 3:25 a.m.
11 on an unlit highway. It was very dark that
12 night. No moon. An overcast night. And
13 due to visibility issues, there was no way,
14 in my opinion, for Mr. Thompson to perceive
15 the vehicle in his path prior to striking
16 it.

17 Q. What was it about the vehicle in its path
18 that made it imperceivable, if that's a
19 word?

20 MR. PENICK: I want to -- Let me
21 just give a standing objection
22 to any expert opinion he gives
23 at which there's been no

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1 predicate to qualify him as an
2 expert.
3 MR. BROUGHTON: And we're going to
4 clear that up, Henry. I
5 wanted to find out first if
6 Sergeant Patterson had any
7 opinions. If he didn't have
8 any opinions, then it
9 wasn't -- wasn't going to be a
10 need to go through his
11 background. But we will clear
12 that up for the judge and the
13 jury.
14 A. The vehicle -- The Morris vehicle had been
15 involved in a crash and had come to rest in
16 the -- come out of the median, come to rest
17 in the northbound lanes of I-85. It was
18 unlit at the time of the crash. The
19 Thompson vehicle's driver would not have
20 been able to perceive it in his pathway
21 until it was too late for him to avoid
22 striking it.
23 Q. All right. Now, let's get back and clear

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1 this up for Mr. Penick and for the judge
2 and the jury. Tell me your background with
3 the troopers, what all your experiences
4 have been as far as investigating accidents
5 and reconstructing accidents.
6 A. Well, I need to go back a little farther
7 than the troopers. In 1998 I became
8 employed with the Guntersville, Alabama
9 Police Department as a patrolman. And I
10 was assigned to the patrol division --
11 Q. I'm sorry. Nineteen --
12 A. 1988.
13 Q. '88. Okay.
14 A. I was assigned as a patrolman with the
15 Guntersville, Alabama Police Department.
16 There my duties consisted of traffic
17 enforcement, general criminal response and
18 accident investigation. In 1990 I attended
19 a course in advanced traffic accident
20 investigation at the Northeast Alabama
21 Police Academy. And in 1992 I attended a
22 course in hazardous materials instant
23 response training at the National Fire

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1 College.
2 Q. During your years with the Guntersville
3 Police Department, how many accidents did
4 you investigate?
5 A. I can't put a number on that. But
6 hundreds.
7 Q. Hundreds. All right. Go ahead. I'm
8 sorry.
9 A. I continued in my day-to-day duties to
10 investigate crashes and achieve this
11 advanced traffic accident investigating
12 training and was placed in command of our
13 fatal accident response team. Then in
14 nineteen -- Well, until being promoted to
15 sergeant when I was a shift commander and
16 continued to investigate crashes, I was
17 then promoted to lieutenant assigned to the
18 criminal investigation division and then in
19 1993 was hired by the Alabama State
20 Troopers.
21 I left my position at the Guntersville
22 Police Department and went to the Alabama
23 State Trooper Academy where I received 80

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1 hours of additional training in crash
2 investigation. In 1994 I attended traffic
3 homicide investigation school; 1995
4 commercial vehicle safety inspector
5 training. In 1996 I attended advanced
6 traffic homicide investigation at the
7 University of North Florida. In 1997 I
8 attended advanced accident investigation at
9 the Institute of Police Technology and
10 Management.
11 In 1997 I attended the Michelin
12 American Tire and Vehicle Dynamics course
13 in Reno, Nevada. In 1997 I attended
14 traffic accident reconstruction. I've
15 taken an annual 40-hour course called
16 Special Problems in Accident Reconstruction
17 at the Institute of Police Technology and
18 Management since 1998. I've attended
19 advanced traffic accident reconstruction
20 with the use of microcomputers also at
21 IPTM, the Institute of Police Technology
22 and Management.
23 I'm certified as a VC-2000 performance

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1 computer operator. I've trained in
2 forensic laser mapping of crash scenes,
3 interviewing and interrogation for the
4 traffic crash investigator, commercial
5 vehicle accident investigation, linear
6 momentum and vector diagramming of the
7 crash scene, computerized collision
8 diagramming, pedestrian accident
9 investigation, motorcycle accident
10 investigation, applied physics for accident
11 reconstruction, photography for the traffic
12 crash investigator.

13 And since that time I've also
14 reattended an update of traffic crash
15 reconstruction in 2003. I'm trained as an
16 operator of the Vetronic Crash Data
17 Retrieval Systems. I'm also certified by
18 the Alabama Peace Officers Standards and
19 Training Commission as an instructor in the
20 field of traffic crash investigation.

21 Q. Do you as part of your duties or have you
22 as part of your duties with the Alabama
23 State Troopers reconstructed truck

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1 accidents?

2 A. Yes, sir, I have.

3 Q. And for how many years have you done that?

4 A. Since 1993.

5 Q. Do you -- Are you qualified as an accident
6 reconstructionist?

7 MR. PENICK: Objection to whether
8 or not he's qualified.

9 A. That would be a question for the Court.
10 I'm trained as an accident
11 reconstructionist.

12 Q. Do you consider yourself qualified as an
13 accident reconstructionist?

14 MR. PENICK: Same objection.

15 Q. You can answer.

16 A. That would be a question for the Court to
17 answer.

18 Q. Have you testified in any civil or criminal
19 cases as an accident reconstructionist?

20 A. Yes, sir, I have.

21 Q. How many, approximately?

22 A. Many. I don't know. Quite a few.

23 Q. In state and federal court?

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1 A. Yes, sir.

2 Q. Do you know if you've testified as an
3 accident reconstructionist in -- expert in
4 federal court here in the Middle District
5 of Alabama?

6 A. I don't know. I can't recall.

7 MR. BROUGHTON: I'm going to
8 offer -- Henry, I'm going to
9 offer Sergeant Patterson as an
10 expert in accident
11 reconstruction to the extent
12 he has opinions that he formed
13 from his investigation of this
14 particular case at this time.

15 MR. PENICK: We renew our
16 objection to any expert
17 opinion rendered by this
18 witness for lack of predicate,
19 lack of qualifications as an
20 expert in the area of accident
21 reconstruction.

22 Q. Sergeant Patterson, just to make sure that
23 the Record is clear on this, you did form

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1 an opinion as I understand it about whether
2 the accident was avoidable or unavoidable
3 by Mr. Thompson, the driver of the
4 Peterbilt?

5 A. Yes, sir, I did.

6 Q. And that opinion was what?

7 MR. PENICK: Same objection about
8 lack of predicate to testify
9 as an expert witness.

10 A. It's my opinion that it was not possible
11 for Mr. Thompson to avoid this crash faced
12 with the circumstances that he was.

13 Q. And that opinion is based on a reasonable
14 degree of accident reconstruction certainty
15 based on your investigation of this
16 accident?

17 A. I'm sorry. Would you repeat that?

18 Q. Yes, sir. Is that opinion based on a
19 reasonable degree of accident
20 reconstructionist's certainty based on your
21 investigation of this accident?

22 MR. PENICK: Same objection to the
23 form of the question and to

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1 lack of predicate to qualify
2 him as an expert witness.
3 A. My opinion is based on the existing
4 lighting conditions, the alignment of the
5 vehicles just prior to impact and my
6 knowledge of the visibility allowed by the
7 headlights of vehicles, yes, sir, in
8 similar circumstances.
9 Q. Did you in -- as part of your
10 investigation -- Well, the other thing --
11 the opinion that I heard you say had to do
12 with the Panther vehicle. And what was
13 your opinion as to any contribution or not
14 of the driver of the Panther vehicle to
15 causing this accident?
16 A. The vehicle driven by Mr. Morris had gone
17 into the median and then come out of the
18 median and overturned and come to rest
19 blocking the northbound lanes of I-85.
20 Q. Do you have any opinion based on your years
21 of accident investigation and
22 reconstruction as to why or for what reason
23 the Panther vehicle had initially exited

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1 I-85 and gone down into the median?
2 MR. PENICK: Object to the form of
3 the question and to lack of
4 proper predicate to qualify
5 him as an expert witness to
6 give an expert opinion about
7 that fact.
8 A. I do not have an opinion as to why this
9 crash had occurred. It's three o'clock in
10 the morning, approximately 3:25 a.m. There
11 are various things that could have led to
12 that. However, due to the fact that there
13 was no potential for criminal charges, I
14 conducted no follow-up investigation to
15 delve further into that, therefore, have
16 not formed an opinion as to what caused
17 that driver to do so.
18 Q. And in your experience is there a
19 difference in the way the tire marks appear
20 leaving an interstate going into a
21 median -- Is there a difference between the
22 way those tire marks would look, and also
23 coming back up, if there was a defect in

Page 23

1 the vehicle as opposed to a -- the driver
2 falling asleep or having a medical
3 condition?
4 MR. PENICK: Object to the form of
5 the question. It requires
6 speculation. Lack of proper
7 predicate as to whether or not
8 this witness can testify about
9 that fact.
10 A. That would be completely dependent on what
11 the defect in the vehicle was.
12 Q. Did you participate in any inspections of
13 the vehicles -- either of the vehicles to
14 determine if there were any defects in the
15 vehicles?
16 A. I did not.
17 Q. Do you have an opinion as to what a prudent
18 driver of an eighteen-wheeler should do if
19 faced with a situation where he finds
20 himself for whatever reason in the median
21 parallel in an interstate?
22 MR. PENICK: Object to the form of
23 the question. Object to

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1 this --
2 MR. BROUGHTON: I'm just asking if
3 he had an opinion.
4 MR. PENICK: -- lack of proper
5 predicate for him to express
6 an opinion.
7 A. Again, it would be circumstance dependent.
8 But being in the median is an unattended
9 event. He should do whatever is necessary
10 to safely regain control of his vehicle.
11 That might be stop the vehicle within the
12 median without attempting to re-enter the
13 roadway. That might be to re-enter the
14 roadway in a safe manner. But, again, it's
15 completely circumstance dependent.
16 Q. What was the speed limit in the area of
17 this accident at the time of this accident?
18 A. 70 miles per hour.
19 Q. Were you able to reconstruct any of this
20 accident to determine the speeds of either
21 of the vehicles?
22 A. I don't know whether I would have been able
23 to or not. However, since there was not a

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1 criminal investigation initiated by my
 2 unit, I did not attempt to do so.
 3 Q. Did you interview either of the occupants
 4 of the Peterbilt?
 5 A. It was not possible to interview
 6 Mr. Morris, and I don't recall whether I
 7 spoke with Mr. Thompson or not.
 8 Q. Well, he had a passenger too. You don't
 9 recall --
 10 A. I don't recall speaking to anyone. I may
 11 have. I'm not saying I didn't. I just
 12 don't recall whether that conversation
 13 occurred or if -- and even if it did the
 14 content of those conversations.
 15 Q. When you took the -- Do your photographs --
 16 any of your photographs depict any evidence
 17 on the roadway as to where and in which
 18 lanes the Panther vehicle had overturned in
 19 the initial accident as you described it?
 20 A. I believe that it was blocking all of the
 21 leftmost lane and partially blocking the
 22 right lane, if not completely.
 23

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1 (Defendant's Exhibit P-2 was marked
 2 for identification.)
 3 Q. Let me show you what I've marked as
 4 Defendant's Exhibit P-2 and ask you did you
 5 take that photograph.
 6 A. I did.
 7 Q. Does that photograph fairly and accurately
 8 depict the scene as it was that night when
 9 you arrived?
 10 A. Yes, sir, it did -- it does.
 11 Q. Have either of those vehicles been -- Were
 12 either of those vehicles moved before your
 13 arrival?
 14 A. No, sir.
 15 Q. Can you tell me in that photograph or can
 16 you describe in that photograph how the
 17 trailer of the -- that the Peterbilt was
 18 pulling is positioned?
 19 A. The trailer of the Peterbilt is aligned to
 20 the right side of the rightmost lane with
 21 the right side trailer wheels just outside
 22 the fog line to the right of the roadway.
 23 In other words, it's partially out of the

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1 right-hand lane to the right.
 2 Q. Were you able to determine a point of
 3 impact between the Peterbilt and the -- or
 4 an area of impact between the Peterbilt and
 5 the overturned Panther vehicle?
 6 MR. PENICK: Let me object to
 7 testimony at this point as to
 8 whether or not he even
 9 determined the point of
 10 impact.
 11 MR. BROUGHTON: That's what I
 12 asked.
 13 MR. PENICK: So lack of proper
 14 predicate for him to give
 15 testimony on this point.
 16 A. I have an opinion as to an approximate area
 17 of impact. As far as a specific point, I
 18 can't narrow it down that closely, but I do
 19 believe I can narrow it down to an area.
 20 Q. What's your opinion as to the area of
 21 impact?
 22 A. It's within the right-hand northbound lane
 23 of I-85.

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1 Q. Does the --
 2 A. And when I describe that, I'm referring to
 3 the nose of the Peterbilt at the point that
 4 it collided with the trailer of the
 5 Kenworth.
 6 MR. PENICK: Same objection.
 7 Q. Did -- Can you show me on that photograph
 8 that approximate area of impact?
 9 A. It's further back than this photograph
 10 depicts.
 11 Q. All right. In Defendant's Exhibit P-2 if
 12 you'll look on the pavement there -- And
 13 tell me first, what is -- what is the
 14 pavement? What material of construction is
 15 in that area? Do you remember?
 16 A. Asphalt.
 17 Q. Asphalt.
 18 A. It's just standard asphalt. It's not a
 19 concrete roadway.
 20 Q. The marks I'm looking at -- And let me walk
 21 around if I can. There are some curved
 22 marks in the left-hand lane. What is your
 23 observation of those marks? You were out

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1 there, you saw them. What were those
2 marks?

3 A. These marks here?

4 Q. Yes, sir.

5 A. The curve marks in the left-hand lane are
6 created as the truck tractor -- the
7 Kenworth truck tractor was deflected from
8 its original position in the right-hand
9 lane. It swung around, pivoting about the
10 rear of the trailer. It swung around in a
11 counterclockwise manner. As the Peterbilt
12 struck it, it moved it out of its path in a
13 counterclockwise manner, swung it from
14 approximately this position in the
15 right-hand lane, swung it around to the
16 left.

17 Q. All right. And those are scrape marks? Is
18 that metal scraping on --

19 A. Metal on asphalt, yes, sir.

20 Q. All right. Now, these marks over here in
21 the right-hand lane look like more of a
22 broad brush. Can you tell what those --
23 Are those metal scrape marks as well?

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1 MR. PENICK: Let me object to that
2 being the right-hand lane.

3 Q. Well, tell me what lane -- And I'm pointing
4 to a specific part of this photograph,
5 which is over on -- closer, I guess, in
6 this photograph -- And it's hard to tell
7 the jury without having the picture in
8 front of them. But closer to the trailer
9 of the Peterbilt is what I'm referring to.
10 And that's a broad mark. And my first
11 question is -- Before we identify which
12 lane it's in, my first question is, is that
13 a scrape mark, metal on asphalt?

14 A. I can't be certain. It has some
15 characteristics which appear to be scrape
16 marks. However, I believe that it's made
17 by the drive axles of the Kenworth as that
18 vehicle began to jackknife -- post-impact
19 began to jackknife and the drive axles of
20 the Kenworth came over to their final rest
21 position.

22 Q. You're saying the Peterbilt?

23 A. Yes, Peterbilt. The green truck.

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1 Q. Okay. Do you -- In that photograph, do you
2 see any tire marks behind the trailer of
3 the Peterbilt?

4 A. I do.

5 Q. And those are -- Do you remember seeing
6 those on the night of the accident?

7 A. I don't recall seeing those at that time,
8 but --

9 Q. How would you describe those marks?

10 A. Well, they're braking -- braking tire marks
11 aligned down the right side of the
12 right-hand lane.

13 Q. And those would have been made -- Do you
14 know what axles or what tires would have
15 made those marks?

16 MR. PENICK: Let me have an
17 objection about him testifying
18 about this, because it
19 requires an expert opinion.
20 We're objecting on the ground
21 saying that he's not qualified
22 to make that objection.

23 A. Based on what I can see in this

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1 photograph -- and, again, I don't recall
2 seeing these tire marks at the time of the
3 crash --

4 MR. PENICK: We'd also object to
5 him --

6 MR. BROUGHTON: Let him finish his
7 answer and then you --

8 MR. PENICK: Let me get my
9 objection in. Let me get my
10 objection in. We'd also
11 object to him speculating
12 about these tire marks as he
13 says he doesn't recall seeing
14 them at the time, so any
15 opinion would be faulty based
16 on some conjecture about the
17 tire marks.

18 Q. Sergeant Patterson, you took these
19 photographs out there the night of the
20 accident, correct?

21 A. I did.

22 Q. And the scene had not been changed before
23 your arrival?

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1 A. It had not.
 2 Q. And any tire marks that are depicted in
 3 that photograph were there the night of
 4 this accident, correct?
 5 A. That is correct.
 6 Q. And, again, describe what you were
 7 describing about these particular tire
 8 marks.
 9 A. These tire marks are aligned down the
 10 right-side lane and --
 11 Q. The right side of --
 12 A. The right side of the right-hand lane.
 13 They appear to lead directly to the trailer
 14 tires of the --
 15 This is the Peterbilt, is it not?
 16 Q. Right. That's confusing.
 17 A. -- the Peterbilt.
 18 Q. Which trailer tires? Which side of the
 19 trailer?
 20 A. The left side tandems of the trailer, the
 21 utility trailer pulled by that truck. They
 22 appear to lead directly to it. I cannot
 23 see in this photograph if they continue on

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1 past that to determine for certain whether
 2 they're from the drive axle or the tandem.
 3 However, they appear to stop directly at
 4 the tire position of the trailer.
 5 (Defendant's Exhibit P-1 was marked
 6 for identification.)
 7 Q. All right. Let me show you Defendant's
 8 Exhibit P-2 and ask you to identify -- I
 9 mean, Defendant's Exhibit P-1, which I
 10 haven't yet offered, and ask you what that
 11 is.
 12 A. This is the crash report prepared by
 13 Trooper Alex Huntley regarding this crash.
 14 Q. All right. And it has been reported by
 15 other people that have reviewed Defendant's
 16 Exhibit P-1 that that drawing shows no skid
 17 marks or tire marks.
 18 MR. PENICK: Object to the preface
 19 of the question about what
 20 other people have said about
 21 it.
 22 Q. And my question to you is, does that
 23 drawing show the tire marks or skid marks

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1 that are shown in Defendant's Exhibit P-2?
 2 A. No, sir, it does not, nor does it
 3 accurately depict the positions of the
 4 vehicles.
 5 MR. PENICK: Object to the
 6 answer. It was nonresponsive
 7 to the question.
 8 Q. And do you have an explanation for that?
 9 A. An explanation for why the tire marks are
 10 not depicted?
 11 Q. Why the tire marks are not depicted and why
 12 the scene might not be accurately depicted
 13 in that particular drawing in Defendant's
 14 Exhibit P-1.
 15 A. Trooper --
 16 MR. PENICK: Object to the -- this
 17 question because it requires
 18 speculation on the part of the
 19 witness.
 20 Q. Go ahead.
 21 A. Trooper Huntley prepared a not-to-scale
 22 diagram. It's not intended to perfectly
 23 depict the final position of this vehicle.

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1 And it poorly depicts the final positions
 2 of the -- particularly vehicle number two,
 3 the Thompson vehicle. And I don't know why
 4 he left the tire marks off. This was a
 5 very dark night. He may have failed to
 6 observe them and not realized they were
 7 there. But, again, that is speculating. I
 8 don't know why he left them off. However,
 9 they were present. He didn't put them on
 10 the diagram.
 11 Q. In the absence --
 12 MR. PENICK: We renew our
 13 objection to that answer since
 14 it was speculation on his
 15 part.
 16 Q. Also on the drawing -- And this is I
 17 guess -- Is there a page number on that
 18 drawing? I call it page four of
 19 Defendant's Exhibit P-1. Why don't we
 20 number these?
 21 MR. BROUGHTON: Henry, do you have
 22 an issue with that --
 23 MR. PENICK: No, I don't.

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1 MR. BROUGHTON: -- so we can
2 clarify? I'm going to number
3 them up in the top corner.
4 Q. And I have just numbered Defendant's
5 Exhibit P-1 in the top right corner of
6 pages one through eight. And we were
7 looking at page four of Defendant's Exhibit
8 P-1. And my other question was, does
9 Defendant's Exhibit P-1 accurately describe
10 the point of impact?
11 A. No, sir, it does not.
12 Q. And that point of impact --
13 MR. PENICK: We renew our
14 objection.
15 Q. -- I understand you don't know precisely --
16 MR. PENICK: Hold on. Let me get
17 my objection out. We renew
18 our objection about him
19 testifying about the point of
20 impact since he did not draw
21 this particular diagram, did
22 not do the investigation to
23 determine the point of

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1 impact.
2 Q. And the point of impact or the area of
3 impact should be located where?
4 MR. PENICK: Same objection.
5 A. Considerably further south and more to the
6 right within the right-hand lane.
7 Q. All right. In Defendant's Exhibit P-2, the
8 photograph that we're looking at, can you
9 see a -- any markings that divide the
10 right-hand lane from the left-hand lane?
11 And I'm going to call those -- Do you call
12 those eastbound lanes of I-85?
13 A. I call I-85 a northbound/southbound
14 roadway. But it proceeded more in a
15 northeasterly manner at this point. But
16 for the sake of our description, when I say
17 north, I'm referring to toward Opelika and
18 south I'm referring to toward Birmingham.
19 Q. All right.
20 A. I'm directing toward Montgomery for the
21 scene of this crash.
22 Q. Both of the vehicles involved in this
23 accident were heading north from --

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1 generally from Montgomery to Atlanta;
2 correct?
3 A. That is correct.
4 Q. And the right-hand lane is the -- I guess
5 also referred to as the outside lane or the
6 inside lane? I think we get -- I get that
7 confused often.
8 A. I call it the outside lane.
9 Q. So the right-hand lane is the outside
10 lane. The left-hand lane is the lane
11 closest to the median, correct?
12 A. That's correct.
13 Q. Okay. And were there any -- Are there any
14 markings in Defendant's Exhibit P-2 that
15 show the centerline between the right-hand
16 lane and the left-hand lane?
17 A. A dashed white stripe -- approximately ten
18 feet white stripes with a 20 foot gap is
19 visible.
20 Q. And where is that visible? Can you point
21 that out to us?
22 A. It's obscured by the scrape marks in the
23 roadway. In the lower portion of the

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1 photograph and then leads directly to the
2 gas tank area or fuel tank area of the
3 green truck, the Peterbilt, at final rest.
4 Q. Can you put -- I'm not sure what will show
5 up on these drawings. They're so -- Can
6 you mark that photograph to show the
7 centerline?
8 A. Seeing the areas that I can see of it, I'm
9 circling with a green Sharpie pen and
10 putting my initials beside that.
11 Q. All right. And that shows a hash mark up
12 close to the tractor of the Peterbilt?
13 A. That's correct.
14 Q. All right. And then the next one partially
15 obscured would be under --
16 A. I believe it to be in this area. However,
17 due to the markings on the roadway, I
18 can't be certain enough to circle it.
19 However, basing it on the difference from
20 the right-hand fog line, which is visible
21 under the trailer of the Peterbilt --
22 Q. Right.
23 A. -- I can tell that it would be --

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MR. PENICK: We would object to speculation on the part -- since he's already testified that he cannot see it and doesn't know exactly which way it's going.

Q. Well, Sergeant Patterson, you were out there on the night of this accident, and you can tell the difference between the right-hand lane and the left-hand lane when you're out there on the scene; correct?

A. Yes, sir. The lanes are approximately 12 feet wide, and it's fairly easy to find the centerline or the center area of that northbound roadway.

(Defendant's Exhibit P-3 was marked for identification.)

Q. Let me show you Defendant's Exhibit P-3, which is a similar photograph from the same direction but a little further back and see if that more accurately shows or more clearly shows the hash marks separating the right lane from the left lane.

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A. Yes, sir, it does.

Q. And for the -- For Mr. Penick's benefit and the judge and jury's benefit, can you also mark on that exhibit where those centerline hash marks are?

A. Yes, sir. I'm circling them with green ink and marking them with my initials.

Q. And we may have to do better than that at trial, but that's the best we have at the deposition. I appreciate that.

(Defendant's Exhibit P-4 was marked for identification.)

Q. Defendant's Exhibit P-4, let me ask you what view this depicts of the accident scene?

A. This --

Q. This one.

A. I'm sorry. P-4.

Q. Yes, sir.

A. This is a photograph taken from north of the final rest positions of the vehicles facing back toward the -- toward the south showing the right side of the Peterbilt.

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Q. Does that also show what lane the Peterbilt tractor or trailer was in at the time of impact and also its final resting place?

A. Of course does not show its position at the time of impact. You can extrapolate its position at the time of impact based on final rest position. It does show its final rest position quite well.

Q. And that -- what -- Where is it -- Where is that trailer at its final rest?

A. The trailer is aligned over the right-hand side -- the right-hand fog line, solid white line on the right-hand side of the right-hand northbound lane.

(Defendant's Exhibit P-5 was marked for identification.)

Q. Defendant's Exhibit P-5 might -- My question on that exhibit is in the foreground of that photograph it looks like there's another eighteen-wheeler stopped there at the accident scene. Do you see what I'm talking about?

A. Yes.

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Q. What is -- What kind of truck was that?

A. A truck bearing the markings of the United Parcel Service.

Q. It's a UPS truck?

A. Yes.

Q. Did you know -- Did you or any of the other troopers investigating the accident speak to anybody in the UPS truck? Do you know?

A. I know that I did, and I didn't recall his presence there until you showed me that photograph. But I do recall him being there. I did speak with the driver of that UPS truck, but I don't recall -- two years later I don't recall the substance of that conversation. But now that I see this photograph, I do recall speaking to him.

Q. Do you know how we can find the driver of that truck? I've been trying to find -- to locate him. You didn't get -- You didn't get a -- You don't recall a name? Can you describe him? Do you remember?

A. I have no recollection of what he looked like. But finding him should not be a

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1 difficult task.
 2 Q. Well, is that truck marked in any way?
 3 A. It bears the markings of the United Parcel
 4 Service.
 5 Q. Right.
 6 A. I feel that I -- with this criminal case,
 7 I'd find him.
 8 Q. Well, I'll see what I can do.
 9 (Defendant's Exhibit P-6 was marked
 10 for identification.)
 11 Q. Defendant's Exhibit P-6, my question here
 12 and -- Does Defendant's Exhibit -- Or tell
 13 me what Defendant's Exhibit P-6 depicts.
 14 A. This is a view from the western side of the
 15 median. The camera angle is directly
 16 toward the final rest position of the
 17 tractors -- the truck tractors. It shows
 18 the top of the overturned trailer of the
 19 Kenworth, the damaged tractor of the
 20 Kenworth. It's a very poor photograph. Due
 21 to that highly reflective sign, it didn't
 22 expose very well. The camera bounced light
 23 off that highly reflective sign and didn't

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1 take a very good picture, but it does --
 2 you can make out the final rest position
 3 particularly of the Kenworth truck tractor
 4 and the overturned trailer.
 5 Q. The -- Are the -- Are there any markings in
 6 the grass median that were -- that you
 7 found were consistent with the overturning
 8 of the tractor-trailer?
 9 A. They're not -- There are some markings in
 10 the lower right-hand corner of the
 11 photograph. Due to the quality of the
 12 photograph, I cannot be certain that these
 13 markings came from that --
 14 Q. From the overturn?
 15 A. From the initial overturning of the
 16 Kenworth.
 17 Q. Okay.
 18 A. But there are markings in the lower
 19 right-hand corner that appear to be dirt
 20 thrown up.
 21 Q. Is there a way to describe for the judge
 22 and the jury based on your observations out
 23 there that night how the Kenworth tractor

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1 and trailer moved after the impact from the
 2 Peterbilt?
 3 MR. PENICK: We would object to
 4 the -- this witness answering
 5 any questions for lack of
 6 proper predicate, lack of
 7 qualifications as an expert
 8 and lack of the unexact
 9 science of determining the
 10 positions after -- by looking
 11 at the resting position of the
 12 vehicles.
 13 A. Yes, sir. It's quite clear that there are
 14 scrape marks that come out that are aligned
 15 well down the centerline of the northbound
 16 roadway, the dashed lines that I circled
 17 earlier. Those scrape marks proceed north
 18 and stop just inside the right-hand lane.
 19 They then redirect toward the left --
 20 (Brief interruption.)
 21 A. One moment.
 22 The scrape marks that are proceeding
 23 down the centerline proceed in a slightly

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1 curved manner going to the right. These
 2 are caused by the Kenworth truck as it's
 3 sliding after coming out of the median and
 4 overturning. They stop and then proceed
 5 again at a sharp angle to the left. These
 6 scrape marks were caused by the initial
 7 vehicle as it slid to a stop or a near
 8 stop.
 9 Q. All right. And when you're saying --
 10 you're pointing to the --
 11 (Brief interruption.)
 12 Q. Do you want to stop and get that?
 13 (Off-the-Record discussion.)
 14 Q. And you were describing -- And you
 15 initially described the scrape marks that
 16 sort of go down and curve a little to the
 17 right in the right lane, and I was going to
 18 get you to, I guess, mark those in some
 19 way. Why don't we put a green A, if it
 20 will show up on that.
 21 A. This is a much better view of the scrape
 22 marks than the photograph that I looked at
 23 earlier.

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1 Q. Right.

2 A. I've basically outlined the scrape marks,

3 the area that I can see with a somewhat

4 curved trapezoid and I'm placing the letter

5 A within that trapezoid.

6 Q. All right. And, again, those scrape marks

7 were made by what?

8 A. Some portion of the overturned Kenworth as

9 it slid to final rest.

10 Q. Before the impact by the Peterbilt?

11 A. Yes, sir.

12 Q. And then go ahead. And then the other

13 curve marks we want to mark the same way.

14 A. These are caused as the impact with the

15 Peterbilt induced a rotation, spun the

16 tractor-trailer combination of the Kenworth

17 basically out of the path of the

18 Peterbilt. I've marked those with the

19 letter B and outlined them also. But they

20 are -- They are indifferent. Those marked

21 letter A and those marked letter B proceed

22 in different directions. Therefore, they

23 had to be caused by a different force. A

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1 different force caused them. I believe

2 that those marked letter A were caused by

3 the Kenworth as it slid to a stop or a near

4 stop and those marked letter B were marks

5 from the Kenworth but were caused by the

6 force of the Peterbilt striking it and

7 basically displacing it out of its place.

8 Q. Right. And those -- The final rest of the

9 Kenworth trailer that is overturned in the

10 left side of this photograph is where in

11 the roadway?

12 A. The final rest of the Kenworth truck is

13 just off the left side of the left-hand

14 lane.

15 Q. All right. Did you form an opinion as to

16 the configuration of the Kenworth tractor

17 and trailer across the roadway prior to the

18 impact with the Peterbilt?

19 MR. PENICK: We reserve our

20 objections about this

21 particular witness expressing

22 an opinion based upon the

23 resting place of the

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1 vehicles.

2 A. I believe that it was aligned with the

3 tractor portion.

4 MR. PENICK: Wait. Let me -- I

5 forgot to clear up my

6 objection to -- I want to also

7 clear up my objection about --

8 MR. BROUGHTON: Let him answer,

9 Henry.

10 MR. PENICK: -- lack of proper

11 predicate as an expert witness

12 to testify to this.

13 A. The tractor portion of the Kenworth was

14 aligned across the right-hand northbound

15 lane, the right-hand lane mostly blocking

16 the right-hand lane of the northbound

17 interstate.

18 Q. But at what sort of an angle? I mean,

19 could you tell that from your -- from the

20 markings out there?

21 A. After it had been displaced with the

22 limited amount of investigation time that I

23 put into this crash post-crash, I did not

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1 determine its exact alignment. But it was

2 across the right-hand lane.

3 MR. BROUGHTON: And, Henry, I want

4 to offer as exhibits --

5 Q. Sergeant Patterson, just make sure I'm

6 clear on this. Defendant's Exhibits P-2

7 through P-6 are photographs that you took

8 on the night of the accident after you

9 arrived on the scene?

10 A. That is correct.

11 Q. And these photographs fairly and accurately

12 depict the scene of the accident at the

13 time that you took these photographs?

14 A. Yes.

15 MR. BROUGHTON: And I want to

16 offer these exhibits as --

17 offer these Defendant's

18 Exhibits P-2 through 6 and P-1

19 as evidence at this time.

20 MR. PENICK: No objection.

21 MR. BROUGHTON: Let's leave these

22 here for Henry. Let me see if

23 I have any other questions.

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1 Q. The -- What photography equipment did you
2 use for these photographs?

3 A. I shot digital photography. I don't recall
4 what camera I was using at that time.

5 Q. Did you use a flash?

6 A. Yes.

7 Q. All right. So the -- the photographs with
8 a flash, would they make those objects in
9 those photographs more visible with that
10 flash than they would have been to a -- an
11 oncoming driver?

12 A. Considerably so. Light cast on the objects
13 would make them visible. This was a very
14 dark night, very dark. And I had
15 difficulty photographing this crash because
16 of that darkness. The distance that a
17 flash will go out and, you know, reveal
18 objects to the lens is limited. It was
19 further compounded by the fact that there
20 was a highly reflective sign right in the
21 midst of this crash scene, a speed limit
22 sign. The reflective tape on the back of
23 the Peterbilt truck trailer also caused

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1 it -- made difficult circumstances for
2 photographing. In other words, you get a
3 really good picture of the reflective tape
4 but you don't get a very good picture of
5 the roadway surface which is dark.

6 Q. Have you investigated rollover -- let's
7 call them one vehicle rollover accidents?

8 A. I have.

9 Q. Have you investigated any with fatalities?

10 A. I have.

11 Q. You know, a rollover without a vehicle
12 being struck by another vehicle?

13 A. Yes.

14 Q. And there have been fatalities?

15 A. Yes.

16 MR. BROUGHTON: That's all I have
17 at this time.

18 EXAMINATION

19 BY MR. PENICK:

20 Q. Sergeant, about these rollover fatalities
21 you just talked about, how many of them did
22 you see fatalities where the rollover was a
23 mere fall over to the side rather than a

Page 55

1 complete 180 degree turnover?

2 A. Say that one more time for me, Mr. Penick.

3 Q. My question really is have you seen
4 fatalities where a truck just laid over on
5 its side? Have you seen --

6 A. Well, trucks don't just lay over.

7 Something has to cause that truck to turn
8 over. So I want to make sure I understand
9 what you're asking. But when a vehicle --
10 a commercial vehicle -- let's say a
11 high-profile vehicle such as a commercial
12 truck tractor overturns, there's a great
13 deal of force required to overturn that
14 vehicle, typically a tripping mechanism of
15 some sort. That vehicle has gone into an
16 uncontrolled sideways maneuver and then
17 trips and overturns. And when it overturns
18 there's a great deal of force applied. It
19 hits the ground hard for one of a better
20 term. So, yes, I've seen many fatalities
21 caused by just that.

22 Q. Okay. And --

23 A. In fact, I would say that's the most common

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1 cause of fatalities in commercial vehicle
2 crashes.

3 Q. All right. Now, I'm talking about those
4 instances where the vehicle rolls over or
5 lays over on its side but does not strike
6 another object.

7 A. Yes, sir. I understand. And that's
8 exactly what I'm referring. Most common
9 type of fatality in my experience in
10 commercial vehicle crashes is when the
11 truck rolls over and that rolling over is
12 the cause of death, whether -- with no
13 other vehicle involved.

14 Q. And we're talking about a rollover or a lay
15 over where it's not a full 180 degree
16 upside down turn. You understand that;
17 right?

18 A. Yes, sir. I'm talking about the vehicle is
19 now lying on its side. Be it the right or
20 the left, it's now on its side, not on its
21 roof, on its side. Very common.

22 Q. Can you name any instance where you have
23 seen that occur? Do have you any

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1 recollection of that?

2 A. Well, I can recall, you know, visually

3 pictures of this in my mind of crashes I've

4 been -- Being able to sit here unprepared

5 for the question and tell you what county,

6 what date, who the fatality was, no,

7 because I have been to the scenes of

8 hundreds of fatal wrecks. And I can't give

9 you names, dates and times. That's all I

10 do every day is investigate fatal wrecks.

11 Q. Okay. But right here as we talk today, you

12 can't remember any of those where you had a

13 fatality where the vehicle just laid over

14 on its side and did not strike another

15 object?

16 A. No, sir. That's not what I said. I said,

17 I can remember many. I cannot give you

18 dates, times and names.

19 Q. I mean, what I'm saying is you can't give

20 me any specific occasion here today?

21 A. I cannot give you dates, times and names,

22 but I remember many crashes like that.

23 Q. Sergeant Patterson, you were -- started out

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1 as you said as a patrolman; right?

2 A. In 1988.

3 Q. Right. And when did you cease being a

4 patrolman?

5 A. Now, we're referring with the Guntersville

6 Police Department where I was a patrolman.

7 I was a patrolman for approximately two

8 years before I achieved the rank of

9 sergeant and became a shift commander.

10 Q. As a shift commander, would you also have

11 to go out and investigate wrecks?

12 A. Yes, sir.

13 Q. And how long did you continue to

14 investigate wrecks being a sergeant?

15 A. About a year. I was a sergeant for about a

16 year until 1991 when I was promoted to

17 lieutenant. And I was transferred then

18 from the patrol division to the criminal

19 investigation division and became the

20 acting commander of the detective division

21 criminal investigation unit. However, due

22 to my training and experience -- and we as

23 detectives continue to participate in the

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1 investigation of fatal crashes. We didn't

2 work routine wrecks, but we did work fatal

3 crashes even as an investigator.

4 Q. Okay. But as a detective then, you were

5 also investigating other homicides other

6 than any -- other than fatalities involved

7 in wrecks?

8 A. My primary assignment was criminal

9 investigation of burglaries, murders,

10 rapes, that type crime. However, if a

11 fatal accident occurred within the city

12 limits of Guntersville, then I was called

13 to assist in that investigation.

14 Q. And how long were you a lieutenant?

15 A. Until I left the department in 1993 to join

16 the ranks of the state troopers.

17 Q. When you left the Guntersville Police

18 Department in 1993, how many years of

19 experience did you have being a policeman?

20 A. From 1988 till 1993. That's five.

21 Q. Okay. And throughout those five years, had

22 you investigated accidents?

23 A. Yes, sir.

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1 Q. But you -- when you -- But when 1991 rolled

2 around and you became a lieutenant, you

3 didn't investigate them as much as you did

4 as a patrolman; is that correct?

5 A. I didn't investigate what we call

6 property-type accidents, but a serious

7 injury-type crash where someone was

8 seriously injured or a fatality, due to my

9 having the highest level of accident

10 investigation within that small department,

11 I would be called to assist in that

12 investigation and give technical

13 assistance.

14 Q. And that would be those two years that you

15 were a lieutenant then; right?

16 A. During those two years, yes, sir.

17 Q. Do you know how many crashes involving

18 fatalities happened within the jurisdiction

19 of Guntersville from '91 to '93?

20 A. I'd have to look that up. I don't know.

21 But not many. It's a small town.

22 Q. By the time you left the Guntersville

23 Police Department, how many fatalities do

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1 you think you had investigated involving a
 2 traffic accident?
 3 A. I don't recall.
 4 Q. All right. Then after that, where did you
 5 go after 1993?
 6 A. In 1993 I was hired by the Department of
 7 Public Safety and attended the Alabama
 8 State Trooper Academy.
 9 Q. And after you came out of the academy,
 10 where did you go?
 11 A. I was assigned to the highway patrol
 12 division, Opelika post, Lee County.
 13 Q. And did you investigate any homicides -- I
 14 mean -- Sorry. Did you investigate any
 15 traffic fatalities or traffic fatality
 16 accidents at that time?
 17 A. Yes, sir.
 18 Q. And how long were you in that position?
 19 A. I was a trooper in the highway patrol
 20 division from my completion of the academy
 21 in early 1994 until I was promoted to
 22 corporal in 1999. At that time I was
 23 promoted to corporal assigned to highway

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1 patrol headquarters as the assistant
 2 commander of the traffic homicide unit.
 3 Q. So from '93 to '99, how many accidents
 4 would you say you investigated that
 5 involved fatalities?
 6 A. I lost track of the numbers a long time
 7 ago, Mr. Penick. I don't know. But a lot.
 8 Q. All right. And then you said in '93 you
 9 became the commander of the traffic
 10 fatalities division or something?
 11 A. I'm sorry. What year did you say?
 12 Q. Was that in 1999?
 13 A. In 1999 I became the assistant commander of
 14 the traffic homicide unit assigned to
 15 highway patrol headquarters.
 16 Q. And do you know how many fatalities you
 17 investigated from '99 until you became the
 18 commander of that division?
 19 A. In that position, my -- I was not directly
 20 assigned as lead investigator on many
 21 crashes. My duties were to assist other
 22 investigators to guide them in their
 23 investigations. I reviewed every single

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1 fatality crash that happened within the
 2 state of Alabama during that time and
 3 reviewed every single traffic homicide
 4 investigation conducted by the 80-some
 5 investigators of the unit. So my -- At
 6 that point, my job was to review their work
 7 and determine its accuracy and completeness
 8 and then forward that case on to the
 9 district attorney for criminal prosecution.
 10 Q. Do you know how many traffic homicides you
 11 reviewed during that period of time?
 12 A. We investigate some 330 to 340 traffic
 13 homicide cases per year.
 14 Q. And I think you were the assistant for how
 15 many years?
 16 A. From 1999 until 2003.
 17 Q. And at that time did you become the
 18 commander of that unit?
 19 A. I did.
 20 Q. And then did you do any investigations as
 21 commander?
 22 A. I do a few. In highly complicated crashes,
 23 crashes which are extremely high profile

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1 such as those that involve multiple
 2 facilities, anything involving a state
 3 vehicle. I continue to investigate
 4 crashes. And, also, I respond to the scene
 5 any time it's convenient for me to do so.
 6 If one of my investigators is out
 7 investigating a crash and I can get there,
 8 I do get there just as a means of helping
 9 them do their job. That's my assignment as
 10 a supervisor is to help them do their job.
 11 Q. Okay. But how many investigations did you
 12 conduct while you were commander?
 13 A. Its -- Depending on what you call
 14 investigation. We assign a lead
 15 investigator, and I am rarely assigned as
 16 lead investigator. But that lead
 17 investigator's job involves everything from
 18 photography, processing the scene, marking
 19 the scene, mapping the scene. They gather
 20 the evidence. Very often I am asked to
 21 review the evidence. If they do a scene
 22 diagram, I can then complete a
 23 reconstruction never having been to the

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1 scene of the crash if they properly
2 gathered the evidence that I need to do
3 that reconstruction.

4 So when you say complete an
5 investigation, I've participated in
6 hundreds. However, having done every part
7 of an investigation myself, I rarely do
8 that.

9 Q. So as commander you didn't conduct any
10 investigations then?

11 A. No, sir, that's not at all what I said.

12 Q. I think you said in most of the cases that
13 would be a lead investigator who would
14 actually do the investigation and you would
15 review it.

16 A. That -- That's a portion of what I said. I
17 have investigators who are assigned to
18 collect the evidence in these cases,
19 analyze that evidence where it's within
20 their skills and their training to do so.
21 If not, they collect the evidence and
22 forward it on to either one of my
23 assistants or to me for further review, for

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1 reconstruction.

2 So when you say did I complete an
3 investigation, I complete an investigation
4 on many of these cases. However, it's
5 based on evidence gathered by other members
6 of this unit and I take it further.

7 Because I have -- I might be able to do
8 something with a case that they're not
9 trained to do, but they are trained to
10 gather the evidence that I need to conduct
11 that further investigation.

12 Q. But I think you did say that on each one of
13 the fatalities or accidents involving
14 fatalities there would be a lead
15 investigator who would really conduct the
16 investigation?

17 A. Every case that we work as a traffic
18 homicide has a lead investigator. Every
19 case that is a fatality but does not
20 involve a homicide, not a criminal case,
21 has a lead investigator. Someone initially
22 responds to that case. However, he's got
23 the resources of the entire highway patrol

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1 division. If he needs further help, he
2 calls for it.

3 Q. And as a commander, though, you didn't
4 conduct those investigations; right?

5 A. No, sir. I said that I have assisted,
6 helped in many of those investigations. I
7 work every day to make sure those
8 investigations are completed correctly,
9 whether I do them myself or someone else
10 does them. But I review them or have them
11 reviewed by one of my two assistants who
12 come to me when they have complicated
13 situations.

14 Q. What's the difference between reviewing an
15 investigation and conducting an
16 investigation?

17 A. The investigator is on the scene, gathers
18 the evidence himself. The reviewing
19 supervisor checks the math, if there was
20 mathematical knowledge of the vehicle
21 speeds. He looks at the diagram to see if
22 it matches the photographs. For example,
23 in this case the erroneous diagram would

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1 not have gotten through this unit had it
2 been a traffic homicide because it's quite
3 obvious from the photographs that the
4 diagram does not match.

5 The role of the reviewer is to use his
6 training and skills in crash reconstruction
7 to make sure no errors exist in the final
8 report. In this case had this been a
9 traffic homicide investigation, we would
10 have caught the fact that the initial
11 diagram does not match what was actually
12 there at the scene --

13 Q. Do you know who reviewed --

14 A. -- as to point of impact and final rest.

15 Q. Do you know who reviewed this particular
16 accident report?

17 A. I don't know, but I could be able to look
18 at it and determine it. The copy I have is
19 left blank under supervisor reviewed. So,
20 apparently, it was turned in and never
21 reviewed.

22 Q. You're not aware of any person other than
23 yourself who was out there who would have

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1 been in a superior position to tell this
2 patrolman Alex Huntley that his diagram was
3 wrong?

4 A. I'm not aware of anyone. However, this
5 diagram was completed -- The report is
6 dated 9/7/04. The crash occurred on
7 9/2/04. So he completed -- He didn't
8 complete this diagram at the scene standing
9 there in the highway off I-85. He
10 completed this either back at his desk or
11 back at his office a few days later based
12 on his recollection of the scene and any
13 field notes that he made.

14 So my involvement with this case ended
15 on the morning of 9/2/04. And I've never
16 seen this report until I received it as
17 part of a subpoena for this deposition. I
18 do not recall any other supervisors being
19 at the scene. However, had they been, they
20 would not have had an opportunity to review
21 this report. It should have been reviewed
22 later by a supervisor and, apparently, was
23 not for some reason. This happened at the

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1 Opelika post. I work at headquarters. I
2 have no idea why it was not reviewed.

3 Q. But he would have made field notes right
4 there at the scene so that when it was time
5 to draw this diagram he would refer to
6 those notes to draw that diagram; right?

7 A. You would have to ask Trooper Huntley that.

8 Q. Can you think of any other traffic fatality
9 investigations you've done other than what
10 we've talked about to this point?

11 A. I'm not sure I understand the question.

12 Q. Can you think of any other traffic fatality
13 investigations that you've done other than
14 what we've talked about up to this point?

15 A. Yes.

16 Q. Are there any others?

17 A. Yes, sir.

18 Q. What other times have you done traffic
19 investigation?

20 A. What other times have I done traffic --

21 Q. Traffic fatality investigations --

22 A. Traffic fatality investigation has been my
23 primary assigned duty since 1999 and was a

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1 significant portion of my duties from 1988
2 till 1999.

3 Q. And have I covered those with you just now?

4 A. No, sir, you haven't scratched the surface
5 of those.

6 Q. Did I leave out a period of time that you
7 were doing investigations that I didn't ask
8 you about?

9 A. No, sir. From -- I've been employed in law
10 enforcement from 1988 until today. Since
11 1999 my primary duties have been
12 investigation of fatal crashes. Prior to
13 1999 that was a significant portion of my
14 duties but was not my primary duty.

15 Q. I understand. But the only thing I'm
16 asking you is that we talked about the
17 Guntersville position. We talked about the
18 position down -- when you were stationed
19 out of Lee County and we talked about your
20 position here. And what I'm asking you is,
21 is there any other time that we haven't
22 talked about that you did traffic fatality
23 investigation?

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1 A. No, sir. '88 till present.

2 Q. Okay. Now, let me take you back to your
3 education. Did you complete college?

4 A. No, sir.

5 Q. Did you graduate from high school?

6 A. I did.

7 Q. Which high school did you graduate from?

8 A. J.B. Pennington High School, Blountsville,
9 Alabama.

10 Q. And --

11 A. Now, when you say complete college, I do
12 not have a degree. I have a significant
13 number of hours. I've attended Southern
14 Union Community College, Wallace State
15 Community College, Snead State Junior
16 College, Samford University. I do not have
17 a degree.

18 Q. Let's talk about those. I think the first
19 one you mentioned was Southern University.

20 A. Southern Union Community College.

21 Q. Okay. And where is that?

22 A. Opelika, Alabama.

23 Q. And what did you study there?

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1 Q. Is it safe to say that the only college
2 that you took some criminal justice courses
3 was at Wallace State?

4 A. Well, I have attended many, many courses at
5 the Institute of Police Technology and
6 Management, which is a division of the
7 University of North Florida. I have taken
8 many courses there. All those are college
9 credit level courses. However, since I'm
10 not pursuing a degree, I've not evaluated
11 what the college credit would be for each
12 of those courses. However, I've been
13 taking courses there for years.

14 Q. Where is this University of North Florida
15 located?

16 A. Jacksonville, Florida.

17 Q. Okay. And when did you first start going
18 and how long did you go there?

19 A. Well, it's -- When you say how long, I
20 take, like, two-week courses there. But
21 they're intense. You know, 40 hours a
22 week, two-week courses. We also contract
23 with the University of North Florida

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1 Institute of Police Technology and
2 Management to send instructors to our
3 academy where they present these courses,
4 again, courses which qualify for college
5 credits. I took my first -- IPTM is how
6 it's referred to -- course in 1994.

7 Q. Okay. And how many courses would you say
8 you took there altogether?

9 A. Well, I have to count them up for you.

10 MR. BROUGHTON: Do you have that
11 in a curriculum vitae format
12 or something --

13 THE WITNESS: It may not be
14 up-to-date.

15 MR. BROUGHTON: -- that can be
16 printed out as an exhibit?

17 Q. Would you do that for us, print out an
18 exhibit? And we'll call it Plaintiff's
19 Exhibit 1.

20 A. I've taken over 20 courses at the Institute
21 of Police Technology and Management. My CV
22 is up-to-date up through 2003. I haven't
23 updated it since then. I can print you

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1 what I have, however it's not going to
2 include any training that I've had from
3 2003 to present.

4 MR. BROUGHTON: How big an effort
5 is that to update that?

6 THE WITNESS: I have to go through
7 my files and certificates.

8 I'm not going to do it today.

9 MR. BROUGHTON: No. I understand.
10 I understand.

11 Q. Could you print it out through 2003?

12 A. I'm doing so.

13 (Plaintiff's Exhibit 1 was marked
14 for identification.)

15 Q. Okay. Now, out of these courses that
16 you've taken, these IPTM courses, how many
17 of them would you say have to do with
18 traffic investigation involving fatalities?

19 A. All of them.

20 Q. Other than the -- these IPTM courses at the
21 University of North Florida, is there any
22 other higher education you've taken? I'm
23 not counting -- I think you said you have

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1 to do continuing education hours, units.
2 I'm not talking about those. I'm just
3 talking about those that have involved
4 study or training through a university or
5 an institute of higher learning?

6 A. Yes, sir, there are other courses that are
7 related. You want specifically crash
8 investigation related stuff, right, or
9 stuff that could enhance my skills in crash
10 investigation, right?

11 Q. Yes.

12 A. In 1991 I took a course in homicide
13 investigation, which entailed a great deal
14 of evidence gathering. Again, the
15 hazardous materials incident response
16 training, kinesic interviewing. We conduct
17 interviews at crash scenes. DUI
18 enforcement, field sobriety testing,
19 commercial vehicle safety inspector
20 training, narcotics interdiction training.
21 We often investigate crashes which involve
22 narcotics.

23 I'm trained in tire forensics to study

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1 tire failure. Performance computers, which
2 is friction testing of roadways. I'm an
3 alcohol breath tester. I'm trained in
4 forensic laser mapping as an instructor.
5 Commercial vehicle accident investigation.
6 Trained in linear momentum and vector
7 diagramming of crash scenes for the purpose
8 of speed analysis.

9 Q. By the way, you didn't do any of that on
10 this particular investigation, did you?

11 A. No, sir. Again, this was not a criminal
12 case because the driver of the prime
13 contributing unit was deceased.

14 Q. All right. Now, let me see if we can get
15 back on track with what I'm asking. Is
16 there any other university or higher
17 educational institute that you went to
18 other than what we've talked about?

19 A. I attend conferences yearly that are
20 strictly devoted to crash investigation.

21 Q. Okay.

22 A. They are usually sponsored by crash
23 investigation societies, members -- you

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1 know, my peers from other states and other
2 countries. And we do live crash testing
3 and analyze results of those crashes.

4 They're training sessions but it's --

5 Q. And when you go to these training sessions,
6 how -- how many hours do you put in on each
7 one of those sessions?

8 A. Most of them are one week, 40 hours. Some
9 are less, three-day conferences.

10 Q. Now -- But then there's some courses on
11 here such as survival Spanish for uniformed
12 officers. That's not related to fatality
13 investigations, is it?

14 A. Well, I often have to conduct -- with our
15 increasing Hispanic population, I often
16 have to conduct investigations which
17 involve people who do not speak English.
18 Therefore, in a way it's related. However,
19 it doesn't help me to determine by physical
20 evidence how a crash occurred. But it
21 helps me to interview a witness who doesn't
22 speak English. So I took it because of my
23 accident investigation need.

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1 Q. Now, you said that this Exhibit 1 that we
2 have -- Plaintiff's Exhibit 1 covers your
3 experiences up through 2003. Can you
4 recall just off the top of your head what
5 other training you've had since 2003?

6 A. I've attended more conferences. I can't
7 recall what they were. I know I went to
8 the Southeastern Association Crash
9 Conference where we did live crash testing
10 and analysis. I've also been to the
11 conference at the Institute of Police
12 Technology and Management since then. We
13 also went to a -- Nope. That would have
14 been in 2003. Those are the only two I can
15 recall off the top of my head.

16 Q. Were these for CEUs?

17 A. No. We don't --

18 Q. Do you have CEUs where you have to do so
19 many classes --

20 A. All police officers within the state of
21 Alabama must maintain credit hours.
22 However, they don't specifically relate to
23 crash investigation. I mean, I may meet my

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1 CEUs through just standard department
2 training that we have to have every year
3 just as law enforcement officers. Firearms
4 training, things such as that. That meets
5 my CEU requirement. There's no CEU
6 requirement for crash investigators within
7 the state of Alabama.

8 Q. So when you went to the Southeastern
9 conference and you took an IPTM course
10 since this 2003 resume that was not for
11 CEUs, that was --

12 A. No. That was strictly to enhance my
13 ability to do my primarily assigned job.

14 Q. Okay. Is there any other education or
15 conferences that you want to tell us about
16 before we move on?

17 A. Not that I can think of. You know, my
18 career evolves around crash investigation,
19 so I've been to a lot of schools.

20 Q. Any one of your classes had to do with
21 lighting, the physics of lighting?

22 A. Yes, sir. I'm trained in human factors
23 which is -- deals a great deal with

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1 conspicuity issues, how the human eye
2 reacts to various lighting conditions.
3 There is a course in human factors and
4 motor crash investigation which deals
5 almost exclusively with conspicuity and
6 perception-reaction time of drivers faced
7 with varying circumstances.

8 Q. Where and when did you take that course?

9 A. I took that course in 2002. It was taught
10 at our academy by instructors from the
11 Institute of Police Technology and
12 Management.

13 Q. You said our academy. Where is that
14 located?

15 A. In Selma, Alabama. I contract with the
16 University of North Florida to send
17 instructors to us because it saves our
18 state money for me to bring the instructors
19 here rather than sending my students to
20 Selma.

21 Q. Do you know how much time you spent on this
22 human factors course?

23 A. That's a 40-hour course.

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1 Q. Do you --

2 A. Many of the conferences that I've attended
3 also dealt with conspicuity issues and
4 perception-reaction time.

5 Q. Okay. Have you ever taken any physics?

6 A. I'm trained in Applied Physics for the
7 Traffic Crash Investigator.

8 Q. Well, have you taken any physics course is
9 what I asked?

10 A. That's the title of the course, Applied
11 Physics for the Traffic Crash Investigator.

12 Q. Okay. And how long was that course?

13 A. I think that was also a 40 classroom hour
14 course with lots of homework.

15 Q. Any other physics course?

16 A. No, sir. Other than high school physics.

17 Q. Did you take physics in high school?

18 A. We touched on physics during many of my
19 math courses. That's been a long time
20 ago. I don't remember what the name of the
21 courses were.

22 Q. But you don't recall taking a physics
23 course in high school, do you?

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1 A. I recall studying physics issues during
2 high school, but I don't know if the name
3 of the course was physics.

4 Q. Now, let's go and talk about this accident
5 that occurred on this occasion. I believe
6 you said that you arrived at the scene
7 somewhere between four and five o'clock; is
8 that correct?

9 A. That's my best estimate based on the time
10 that the crash occurred and when I took the
11 photograph.

12 Q. And as best you know, the accident occurred
13 about 3:25 a.m.; is that correct?

14 A. Based on what was reported to me.

15 Q. And do you know whether or not any one of
16 the vehicles was moved in that 35
17 minutes or hour and 35 minutes before you
18 arrived?

19 A. There were no wreckers present.

20 Q. But you don't know whether or not any of
21 the vehicles were moved from the time of
22 the accident until you got there?

23 A. They were not moved from the time of the

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1 accident until I arrived. There were no
2 wreckers present.

3 Q. And I think you said you arrived on the
4 scene and Alex Huntley was already there;
5 is that right?

6 A. Yes, sir.

7 Q. And was he busy taking field notes?

8 A. I don't know.

9 Q. Was he taking measurements?

10 A. No, sir.

11 Q. Was he doing any pacing to pace off the
12 distances?

13 A. I wasn't paying attention to Mr. Huntley.
14 I don't know what he was doing.

15 Q. For example, on Defendant's Exhibit 1,
16 there's a notation that there's 530 feet
17 from off roadway to re-enter roadway. Do
18 you know who took those measurements?

19 A. It's on Trooper Huntley's report, and I
20 would assume that he measured that with his
21 issued roll-up tape, which means that he
22 walked back down the roadway and saw that
23 the vehicle traveled -- that the Morris

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1 vehicle traveled for 530 feet from the time
2 it ran off the road into the median until
3 it came back into the roadway.
4 Q. All right. Now -- And so you arrived at
5 the scene. And was there anybody other
6 than Alex Huntley there taking field notes?
7 A. I'm sure there were a lot of people there.
8 These crashes tend to draw lots of
9 emergency personnel when they involve
10 commercial vehicles. There were firemen
11 there. I don't recall if there were other
12 troopers there. You know, I've been to
13 many, many crashes since this time. I
14 don't -- I didn't make any notes as to who
15 was present.
16 Q. And I think you said that you were there
17 for a limited time. How long were you
18 there?
19 A. I don't know. Maybe an hour, hour and a
20 half, I'm guessing. I have no idea exactly
21 how long I was there.
22 Q. All right. When you got there, did you see
23 the driver of the Peterbilt, Mr. Thompson?

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1 A. I don't recall seeing him.
2 Q. Do you recall talking to him?
3 A. No, sir, I don't recall that.
4 Q. Do you recall talking to the passenger in
5 the vehicle with Mr. Thompson, Mr. Tidwell?
6 A. I do not -- I do not recall that.
7 Q. Did you interview or talk to anyone?
8 A. I don't -- I remember talking to the driver
9 of the UPS truck. I recalled that today.
10 I don't remember the substance of that
11 conversation.
12 Q. But you don't know whether or not the
13 driver of the UPS truck actually witnessed
14 the collision, though, do you?
15 A. My best recollection is that he did. I
16 know that he was involved in a hard braking
17 event to avoid colliding into the rear of
18 the truck. But I don't recall exactly what
19 he said.
20 Q. Do you think that hard braking that he did,
21 though, was to avoid colliding with some
22 stationary objects that he saw in front of
23 him? In other words, these two other

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1 vehicles that had come to a rest by the
2 time he saw them.
3 A. It's possible.
4 Q. Okay. So you're not -- So you can't say
5 for certain that the UPS driver saw any of
6 this accident?
7 A. My best recollection is that he did, but I
8 do not recall that for 100 percent
9 certainty.
10 Q. Do you recall talking to Trooper Huntley?
11 A. I don't recall talking to him. I'm sure I
12 did. It would be unnatural for me not to
13 be at the scene of a crash and speak with
14 the trooper on the scene. However, I don't
15 recall speaking to him.
16 Q. Do you recall speaking to anybody there
17 other than the UPS driver?
18 A. No. But I'm sure I did.
19 Q. Now is your chance. Is there anybody else
20 that you spoke to?
21 A. Again, yes, I'm sure there are other people
22 I spoke to. I thought I just answered
23 that, Mr. Penick. I don't recall who they

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1 were or what we talked about. Once I
2 determined that the driver of the causative
3 vehicle was deceased, I ceased being in
4 investigator mode. I'm a criminal
5 investigator.
6 Q. And I believe that you said once you got
7 there and you saw that Morris was deceased
8 that you decided that it was not a criminal
9 investigation?
10 A. It was obvious to me that Mr. Morris had
11 caused this crash, therefore, there was no
12 one to prosecute.
13 Q. Okay. Let me go back and look at the
14 Defendant's Exhibit 1 and see if you can
15 help me with this. On the front of
16 Defendant's Exhibit 1, there appears to be
17 a box that says prime contributing
18 circumstances. Is that what it says?
19 A. Yes, sir.
20 Q. And it says 27. Do you know what 27 is?
21 A. Yes, sir. It's at the bottom left of your
22 report.
23 Q. I can't read it it's so small. Can you

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1 tell me what it is?
2 A. Driver not in control.
3 Q. So -- And when it says driver not in
4 control, what did you take that to mean?
5 Which one of the --
6 A. It refers to unit number one.
7 Q. And that was Mr. Morris; right?
8 A. Yes.
9 Q. Now, do you have any evidence that would
10 tell you why Morris went off the roadway
11 and came back up on the roadway?
12 A. I did not continue to investigate this
13 crash, therefore, I did not develop any
14 evidence. Whether any existed or not, I
15 don't know.
16 Q. Do you know what the concept of the term
17 contributory negligence means?
18 A. In general terms, yes.
19 Q. Do you know of anything that would tell you
20 that Morris was guilty of contributory
21 negligence when his vehicle went off the
22 road and onto the road?
23 A. Perhaps in the general terms that I

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1 understand contributory negligence.
2 Q. Well, let me ask you this question.
3 MR. BROUGHTON: Let him finish his
4 answer.
5 Q. I thought he needed clarification, but he
6 doesn't. Go on, then.
7 A. In the terms that I understand contributory
8 negligence, I understand that to mean that
9 someone has done something but you have
10 done something that has enhanced the
11 results of that or made them worse. In
12 this case, I do not believe any negligence
13 existed other than on the part of
14 Mr. Morris, therefore, it couldn't be
15 contributory. It was the sole negligence.
16 Q. Now, do you know what negligence Mr. Morris
17 engaged in?
18 A. He has a duty to maintain control of his
19 vehicle. He ran off the roadway into the
20 median. In an attempt to re-enter the
21 roadway, he blocked the northbound lanes
22 and came to rest in an uncontrolled fashion
23 in the northbound lanes. That circumstance

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1 led to Mr. Thompson being unable to avoid
2 striking him.
3 Q. Do you know whether or not another vehicle
4 had run Mr. Morris off the road?
5 A. No. Have no idea.
6 Q. But if another vehicle ran Mr. Morris off
7 the road that wouldn't be negligence on his
8 part, would it?
9 MR. BROUGHTON: Object to the
10 form. Assumes facts not in
11 evidence.
12 A. If a vehicle ran him off the road, he's
13 faced with options.
14 Q. But my question, though, is if another
15 vehicle ran Mr. Morris off the road that
16 wouldn't be negligence on his part, would
17 it?
18 MR. BROUGHTON: Object to the
19 form. I don't think you're
20 giving him enough facts. Not
21 enough facts, no predicate and
22 it assumes facts that aren't
23 in evidence.

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1 Q. Hypothetically.
2 A. If someone -- If Mr. Morris was passing a
3 vehicle on the left and that vehicle you're
4 saying came left and forced him into the
5 median --
6 Q. Yeah.
7 A. -- that would be a causative factor for him
8 to do that. He'd be faced with a choice of
9 maintaining a position and having contact
10 with this encroaching vehicle or going into
11 a dark unknown median. And he would be
12 faced with which of those two bad events he
13 wanted to occur. Of course, the primary
14 cause would be the person who encroached
15 into his lane, had established control of
16 that left lane. But that is purely
17 speculative and a made up circumstance that
18 I have no evidence or reason to believe
19 occurred.
20 Q. That's my question. Do you know whether or
21 not anybody forced him off the road?
22 A. No one knows.
23 Q. Do you know?

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1 Q. Isn't that what you just said?
2 A. I said that I don't know whether I would
3 call that negligence. By legal definition,
4 it may be. However, I'm not going to fault
5 the man for having a heart attack.
6 Q. Okay.
7 A. Again, if -- But I have no evidence that
8 something like that occurred.
9 Q. So you don't have any evidence as to
10 whether or not Mr. Morris was negligent
11 then, right?
12 MR. BROUGHTON: Object to the
13 form.
14 A. Yes, sir, I do have considerable evidence
15 that Mr. Morris was negligent in that he
16 caused this crash. Why he caused this
17 crash I cannot answer for you, because I
18 don't have any evidence to give me that.
19 However, Mr. Morris was -- had the primary
20 responsibility for maintaining control of
21 his vehicle and not causing a wreck. In
22 this case for some reason that I don't
23 know, he drove off into the median at

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1 off the roadway, he has a duty to maintain
2 control of his vehicle as best he can. He
3 could have stayed in the median. His
4 mistake was made when he attempted to
5 re-enter the roadway at too sharp an angle
6 causing his vehicle to go out of control
7 and overturn where it laid down in the path
8 of vehicles that were just proceeding down
9 a dark road.
10 He put the unlit, unreflectorized
11 portion of his vehicle into the path of
12 this -- of Mr. Thompson's vehicle.
13 Mr. Thompson due to that dark night,
14 unreflectorized surface was unable to see
15 it and collided into it, unable to see it
16 until it was too late for him to be able to
17 stop his truck and do anything about it.
18 So you're asking me if there's
19 contributory negligence on the part of
20 Mr. Morris. Mr. Morris caused this crash.
21 Why he caused this crash I cannot answer
22 for you. But had he maintained control of
23 his vehicle either before it went in the

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1 three -- approximately 3:25 a.m., over
2 corrected his vehicle in an attempt to come
3 out of the median, lost control of it and
4 put it into the pathway of those vehicles
5 that were legally proceeding on I-85
6 northbound.
7 Q. I promise you this will be my last time
8 asking this question.
9 A. Well, we've rehashed that issue repeatedly.
10 Q. But if someone forced him off the road and
11 he laid his vehicle down, you wouldn't
12 consider that to be negligent, would you?
13 MR. BROUGHTON: Same objection as
14 before.
15 A. There is absolutely no evidence to
16 indicate --
17 Q. I understand.
18 A. Please let me answer if you ask the
19 question, Mr. Penick.
20 Q. Continue.
21 A. There is no evidence that I saw at this
22 scene to indicate that Mr. Morris was
23 forced off the roadway. If he was forced

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1 median or while it was in the median and
2 not attempted to come out in a too abrupt
3 fashion this crash would not have occurred.
4 Q. Let me ask you this question. It indicates
5 on this picture -- I believe you said that
6 you saw some skid marks but you couldn't
7 tell for certain whether or not those skid
8 marks go along with the Peterbilt driven by
9 Thompson. Is that what you said?
10 A. No, sir, that's not what I said.
11 Q. Well, I think you said you couldn't say for
12 sure that those skid marks go with the
13 Peterbilt.
14 A. Again, that's not what I said.
15 Q. Okay. Well, could you tell us what you
16 said about that?
17 A. If you're referring to Exhibit Number
18 P-3 -- correction -- Exhibit P-2, the tire
19 marks on the right side of the right-hand
20 lane are from the Peterbilt. I cannot be
21 certain whether they are from the trailer
22 or the tractor, but they are from that
23 vehicle.